IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1973
No. 73-717

ALEXANDER J. ANTOINE and
IRENE F. ANTOINE, his wife — *Appellants,*

v.

THE STATE OF WASHINGTON, — *Appellee.*

MOTION TO STRIKE AND REPLY TO AMICUS CURIAE OF APPELLEE

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I

MOTION TO STRIKE

The Solicitor has, without permission, filed a brief raising new issues beyond the time authorized by Rule 42(2) for the filing of such briefs.[1] The Solicitor has also lodged with the Court a map purporting to show the boundaries of National Forests.

[1]The invitation of the Court to the Solicitor to express his views was limited to the question of noting probable jurisdiction. (Order of February 19, 1974 in this docket file)

Appellee, State of Washington, respectfully requests that the brief and the map[2] be stricken. The Court should look only to the certified record in deciding questions presented. *Lawn v. United States*, 355 U.S. 339, 354 (1958); *McClellan v. Carland*, 217 U.S. 268, 282, 283 (1910).

II

AUTHORIZATION FOR REPLY BRIEF

After receiving the brief from the Solicitor, appellee was advised by the Clerk of the Court to file a response limited in scope to the new issues belatedly injected into this proceeding.

III

IDENTIFICATION OF NEW ISSUE INJECTED BY THE SOLICITOR

It is argued by the Solicitor that the establishment of National Forest land in a substantial portion of the extinguished Northern Half of the Colville Indian Reservation supports, in some manner, the proposition that the state may not enforce its hunting laws.[3]

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[2]Amicus Br., p. 10, fn. 7. Appellee is likewise lodging copies of a map showing, in detail, the boundaries of the Colville National Forest. The map is marked to show that the appellants were arrested by the Wildlife Agent *outside* the boundaries of the National Forest. The marked locations were placed on the map by the Wildlife Agent Robert Ford, who arrested Appellants. We submit that both the Federal map and our map should be ignored. However, if the Court elects to proceed outside the record, we submit that our map should also be considered.

[3]Amicus Br., pp. 10-11.

IV

ARGUMENT IN ANSWER TO *AMICUS CURIAE*

The establishment of the Colville National Forest occurred *after* the cession of jurisdiction over the Northern Half to the State of Washington by Congress.[4] 27 Stat. 62-64 (1892). As pointed out in the state's brief[5], the legislature of the State of Washington has not expressed its consent to a retrocession of jurisdiction of the Northern Half to the United States since 1892. In 1897, Congress enacted certain provisions relating to the establishment of National Forests. (Act of June 4, 1897, ch. 2, § 1, 30 Stat. 36)[6] and provided in pertinent part:

> "The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens of the State."

This Court has construed 16 U.S.C. 480 and held that a state tax on a person removing timber from forest lands imposed no unconstitutional burden on the Federal Government, *Wilson v. Cook*, 327 U.S. 474, 485 (1946). Second, the Court ruled that, under

[4]The Colville National Forest was established by Presidential Proclamation on March 1, 1907.

[5]Appellee Br., p. 13.

[6]Currently codified as 16 U.S.C. 480 with minor amendments not relevant to this case. Act of March 1, 1911, ch. 186, § 12, 36 Stat. 963.

16 U.S.C. 480, Congress declined to accept exclusive jurisdiction over the National Forests and that the state possessed territorial jurisdiction to tax activities carried on within the National Forests. 327 U.S. at 487. It is doubtful that the legislature of the State of Washington could effectively give up jurisdiction over the Colville National Forest in the face of 16 U.S.C. 480.[7]

As noted, the Government ignores the fact that the State of Washington has not purported to retrocede jurisdiction to the United States. The authority relied on by the Government does not support their contention that the state's jurisdiction is somehow limited or rendered inoperative.[8] The fact that federal officials may kill deer to protect federal land or perform an environmental study for the same purpose does not militate against the conclusion that the state possesses jurisdiction to enforce its game laws against members of the Colville Tribe of Indians in the extinguished Northern Half. *Hunt v. United States*, 278 U.S. 96 (1928), and *New Mexico State Game Commission v. Udall*, 410 F.2d 1197 (10th Cir. 1969) hold that federal officials, in the performance of their duties, possess immunity from

[7] See: *Georgia Pacific Corp. v. County of Mendicino*, 340 F. Supp. 1061 at 1070 (D.C. N.D. Cal., 1972).

[8] E.g.: *Morton v. Ruiz*, 415 U.S. 199 (1974) stated the issue "* * * whether the geographical limitation placed upon general assistance eligibility by the BIA is consistent with congressional intent and the meaning of the applicable statutes, * * *" (415 U.S. at 209) and concluded that Congress did not intend to limit general assistance eligibility only to Indians residing *on* a reservation despite inconsistent administrative interpretations by the BIA. (415 U.S. at 237) No question was raised or decided regarding state jurisdiction or claimed immunity from state law on behalf of Indians outside reservation boundaries.

state law. These cases do not address themselves to the question of the exercise of a state's jurisdiction over territory. The appellants are not acting as agents of the Federal government. They claim rights as members of the Colville Tribe of Indians. There is no basis for claiming immunity from the exercise of the state's jurisdiction under these decisions.

III

CONCLUSION

Appellee, State of Washington, respectfully submits that its motion to strike the brief of the United States and the documents lodged with the Clerk should be granted.

In any event, the decision of the court below should be affirmed for the reasons set forth herein and set forth in the brief of appellee previously filed with the court.

Respectfully submitted,

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November 20, 1974